

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

MICHAEL DONAVIN
RODRIGUEZ,

Petitioner,

v.

RANDY HARDING,

Respondent.

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Case No. CIV-23-107-D

ORDER

Before the Court is the Report and Recommendation issued by United States Magistrate Judge Amanda Maxfield Green pursuant to 28 U.S.C. § 636(b)(1)(B) and (C) [Doc. No. 18]. Judge Green concludes that “Petitioner has not established the facts necessary to overcome” jurisdictional or procedural bars to each of his claims and recommends that the Petition be dismissed with prejudice. *Id.* at 22.

The case file shows no timely objection to the Report nor a request for an extension of time, even though Petitioner was expressly informed of his right to object, the procedure for doing so, and the consequences of failing to object. Therefore, the Court finds that Petitioner has waived further review of all issues addressed in the Report. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991); *see also United States v. 2121 E. 30th Street*, 73 F.3d 1057, 1060 (10th Cir. 1996). For the reasons explained by Judge Green, the Court finds that this action should be dismissed with prejudice.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 18] is **ADOPTED** in its entirety. This action is **DISMISSED** with prejudice. A separate judgment of dismissal shall be entered.

IT IS FURTHER ORDERED that pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts, the Court must issue or deny a certificate of appealability (COA) when it enters a final order adverse to a petitioner. A COA may issue only upon “a substantial showing of the denial of a constitutional right.” *See* 28 U.S.C. §2253(c)(2). “When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Upon consideration, the Court finds the requisite standard is not met in this case. Therefore, a COA will be denied. The denial shall be included in the judgment.

IT IS SO ORDERED this 18th day of September, 2023.



TIMOTHY D. DeGIUSTI
Chief United States District Judge